

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STACY ERNST, DAWN HOARD, IRENE
RES-PULLANO, MICHELLE LAHALIH, and
KATHERINE KEAN,

Plaintiffs,

v.

CITY OF CHICAGO,

Defendant.

Case No.: 08 C 4370

Judge Charles R. Norgle, Sr.

Magistrate Judge Jeffrey Cole

**DEFENDANT CITY OF CHICAGO’S MOTION TO STRIKE 5,441 PAGES OF
“SUPPLEMENTAL ADMITTED TRIAL EXHIBITS” AND REFERENCES TO
EVIDENCE OUTSIDE THE TRIAL RECORD AND RESPONSE TO PLAINTIFFS’
MOTION TO REMOVE DOCKET ENTRIES 560-5 AND 563-1**

EXHIBIT LIST

Exhibit A	Unadmitted Exhibits Not Referenced by Plaintiffs
Exhibit B	Unadmitted Exhibits Referenced by Plaintiffs
Exhibit C	February 4, 2015 Letter from City Counsel C. Donham to Plaintiffs’ Counsel

EXHIBIT A

<p align="center"><u>EXHIBIT A</u></p> <p align="center">Plaintiffs' "Supplemental" Filing of 29 Unadmitted Exhibits Not Referenced in Plaintiffs' Proposed Findings of Fact or Conclusions of Law</p>			
Exhibit	Exhibit Title as Provided by Plaintiffs' Supplemental Filings - Dkt. 560 and Dkt. 563	Dkt. No.	Pages
Plaintiffs' Exhibit 8	HPS Email to City of 2004 Test Results—Attachment to Email Not Produced by City	560-1	1-2
Plaintiffs' Exhibit 9	HPS Summary to City Regarding 2000 to 2007 Test Results	560-1	3-47
Plaintiffs' Exhibit 10	HPS Summary to City 2008 to 2009 Test Results	560-1	48-52
Plaintiffs' Exhibit 11A	Chart provided by Swann/Preston to Gebhardt Summarizing Number of Paramedic Hires 1996-1999	560-1	53-311
Plaintiffs' Exhibit 11B	Emails from Anne Preston to Gebhardt and from T. Swabb	560-1	312-315
Plaintiffs' Exhibit 12	Backup Documents for Hiring Summary Provided Gebhardt from City Attorneys	560-1	316-328
Plaintiffs' Exhibit 14B	Gebhardt March 15, 2012 Deposition Exhibit 7	560-1	383-406
Plaintiffs' Exhibit 15	City Document Regarding Acquisition of New Ambulances and Stryker Cots 2004-2005	560-2	47-63
Plaintiffs' Exhibit 16B	Campion Deposition Exhibit 25	560-2	85-89
Plaintiffs' Exhibit 18A	Fax to Howe from Gebhardt April 12, 2000	560-2	90-92
Plaintiffs' Exhibit 18B	Fax to Howe from Gebhardt June 18, 2001	560-2	93-95
Plaintiffs' Exhibit 19E	Howe Notes	560-2	96-97
Plaintiffs' Exhibit 20	Swabb and Preston to Gebhardt Jacobs July 19, 2012	560-2	98-106
Plaintiffs' Exhibit 24	August 17, 1999 Proposal for Test Administration, Gebhardt to Stensland	560-2	107-111
Plaintiffs' Exhibit 38	Collective Bargaining Agreements with City 2005 to Present	560-3	1-180
Plaintiffs' Exhibit 39	Labor Contract between CFF Union and City of Chicago	560-4	1-181
Plaintiffs' Exhibit 41	Appendix A to Gebhardt 1999 Validation Study	560-4	183-348
Plaintiffs' Exhibit 42	Excel spreadsheet of Scores 2000 to 2009	560-5	1-261
Plaintiffs' Exhibit 46	City List of Test Administrators	560-5	270-272
Plaintiffs' Exhibit 47	2006 to 2013 City of Chicago Overtime Reports	560-5	273-3935

EXHIBIT A

Plaintiffs' "Supplemental" Filing of 29 Unadmitted Exhibits Not Referenced in Plaintiffs' Proposed Findings of Fact or Conclusions of Law

Exhibit	Exhibit Title as Provided by Plaintiffs' Supplemental Filings - Dkt. 560 and Dkt. 563	Dkt. No.	Pages
Plaintiffs' Exhibit 51	Gebhardt August 17, 1999 Proposal to Stensland	560-5	3948-3962
Plaintiffs' Exhibit 52	Gebhardt to Howe June 18, 2001with Enclosed listing of applicants	560-5	3963-3965
Plaintiffs' Exhibit 55	August 4, 2004 Note re VHS tape	560-5	3977-3978
Plaintiffs' Exhibit 56	Letter from Gebhardt to Howe re listed of testing equipment	560-5	3979-3981
Plaintiffs' Exhibit 57	Letter from Gebhardt to Noys re inaccurate response in fail letters	560-5	3982-3983
Plaintiffs' Exhibit 59	Injury Report re Male Participant in "Validation Study"	560-5	3984-3991
Plaintiffs' Exhibit 60	Reconstructed Data from Files Produced as CHICVAL	560-5	3992-4113
Plaintiffs' Exhibit 66	Dr. Michael Campion Curriculum Vitae	560-5	4120-4157
Plaintiffs' Exhibit 67	Dr. William McArdle Curriculum Vitae	560-5	4158-4179

EXHIBIT B

EXHIBIT B**Plaintiffs' "Supplemental" Filing of 18 Unadmitted Exhibits Referenced in Plaintiffs' Proposed Findings of Fact or Conclusions of Law**

Exhibit	Exhibit Title as Provided by Plaintiffs' Supplemental Filings - Dkt. 560 and Dkt. 563	Dkt. No.	Pages	Plaintiffs' References in Proposed Findings of Fact and Conclusions of Law (Dkt. No. 561)
Plaintiffs' Exhibit 13	Documents Transmitted to Gebhardt from CFD regarding Hiring Process	560-1	329-332	Plaintiffs' Findings of Fact ¶ 28(a)
Plaintiffs' Exhibit 14A	Documents Transmitted to Gebhardt from CFD Regarding Academy Curriculum, Workload and Assignments	560-1	333-382	Plaintiffs' Findings of Fact ¶¶ 3, 28(a), 28(c), 46, and FN8
Plaintiffs' Exhibit 14C	Gebhardt March 15, 2012 Deposition Exhibit 8	560-2	1-46	Plaintiffs' Findings of Fact ¶¶ 4, 33, 151, 190 (referencing ¶ 4), 239 (referencing ¶ 151), 245
Plaintiffs' Exhibit 16	City Document Regarding Changes in Dispatch Protocols June 2000	560-2	64-84	Plaintiffs' Findings of Fact ¶ 28(a)
Plaintiffs' Exhibit 45	Hiring History for 2004 Applicants	560-5	262-269	Plaintiffs' Findings of Fact ¶ 155
Plaintiffs' Exhibit 50A-C	Berry Revised Reports February 9, 2013	560-5	3936-3947	Plaintiffs' Findings of Fact ¶ FN 8
Plaintiffs' Exhibit 53	HPS Copy of Physical Ability Scales	560-5	3966-3976	Plaintiffs' Findings of Fact ¶ 39
Plaintiffs' Exhibit 61	Reconstructed Data from Records in Excel Format as EMSCOMB	560-5	4114-4119	Plaintiffs' Findings of Fact ¶ 115
City's Exhibit 10	3/18/96 Letter from Dr. Gebhardt to Adrienne Bryant regarding project detail	563-1	1-5	Plaintiffs' Findings of Fact ¶ 16
City's Exhibit 13	Purchasing Department documents for CFD Paramedic physical abilities test	563-1	6-70	Plaintiffs' Findings of Fact ¶ 20
City's Exhibit 15	Professional Services Agreement Between the Chicago Fire Department and Human Performance Systems, Inc. for Administration of PAT	563-1	74-178	Plaintiffs' Findings of Fact ¶ 20
City's Exhibit 16	1/25/98 Tentative EMS/PAT Schedule	563-1	179-181	Plaintiffs' Findings of Fact ¶ 20

EXHIBIT B

Plaintiffs' "Supplemental" Filing of **18 Unadmitted Exhibits Referenced** in Plaintiffs' Proposed Findings of Fact or Conclusions of Law

Exhibit	Exhibit Title as Provided by Plaintiffs' Supplemental Filings - Dkt. 560 and Dkt. 563	Dkt. No.	Pages	Plaintiffs' References in Proposed Findings of Fact and Conclusions of Law (Dkt. No. 561)
City's Exhibit 17	2/2/98 Letter from Gebhardt to Stensland regarding February 25 to 27, 1998 initial development meetings	563-1	182-189	Plaintiffs' Findings of Fact ¶ 20
City's Exhibit 34	4/1/99 Letter from Howe to Burns re Space for PAT	563-1	190-192	Plaintiffs' Findings of Fact ¶ 118
City's Exhibit 39	HPS Rebuttal Report to Campion Report and Deposition	563-1	193-213	Plaintiffs' Findings of Fact ¶¶ 28(b), 128, FN 7
City's Exhibit 79	List of Paramedics Separations Since January 1990 While in Academy	563-1	214-217	Plaintiffs' Findings of Fact ¶¶ 14, FN 7

EXHIBIT C

CARY E. DONHAM

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February 4, 2015

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Joshua Karsh jkarsh@hsplegal.com

Re: Ernst, et al. v. City of Chicago: No. 08-cv-4370 N.D. Ill.

Dear Counsel:

We are writing with regard to your first supplemental exhibit filing, Dkt. 560, to advise you this filing contains confidential information that Magistrate Judge Cole ordered to be redacted during the Final Pre-Trial Conference. Further, this filing includes a confidential Settlement Agreement among your clients and Human Performance Systems, Inc. ("HPS"), and an IRS Form W-9 that includes Stacy Ernst's social security number and home address. In addition, without authorization, in your second supplemental exhibit filing, Dkt. 563, you filed a City document, City Exhibit 79—that the City did not offer at trial—that contains personal information.

Plaintiffs' Exhibit 45, the "Hiring History for 2004 Applicants," (cited in your Proposed Findings of Fact paragraph 155) includes names of CFD paramedic hires and reveals information including the reasons for termination, such as substance abuse. It also provides health information, including a description of paramedics being on disability. Magistrate Judge Cole ordered that such material be redacted. (See Feb. 25, 2014 P.M. Pretrial Conf. Tr. at 119:21-24.)

Similarly, Plaintiffs' Exhibit 46, the unredacted "City List of Test Administrators" includes both the addresses and telephone numbers of HPS's test administrators. Magistrate Judge Cole also ordered this information be redacted. (See Feb. 25, 2014 P.M. Pretrial Conf. Tr. at 121-6.)

In addition, City Exhibit 79 (cited in your Proposed Findings of Fact paragraph 14 and fn. 7) contains personal information concerning CFD employees, including reasons for separation. The City chose not to offer this exhibit at trial, nor did Plaintiffs, so the City had no opportunity to object to the publication of personal information.

Susan Patricia Malone
Marni J. Willenson
David Borgen
February 4, 2015
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Finally, while Plaintiffs' Exhibit 51 purports to be a "Gebhardt August 17, 1999 Proposal to Stensland," this document, in fact, is a confidential Settlement Agreement between the Plaintiffs and HPS and also includes an unredacted IRS Form W-9 from Stacy Ernst.

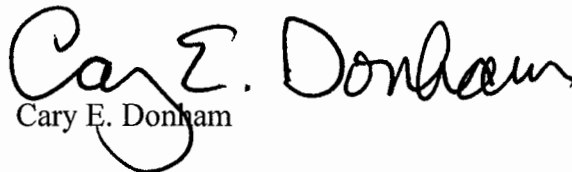
These filings violate paragraph 2 of the protective order entered in this case (Dkt. 31) as amended (Dkt. 139, 183), because you filed these documents without seeking or obtaining relief from the terms of the protective order.

Accordingly, the City requests plaintiffs immediately seek leave to withdraw unredacted Plaintiffs' Exhibits 45 and 46 and City Exhibit 79. We take no position regarding what has been filed as Plaintiffs' Exhibit 51, other than to advise you of its inclusion in Dkt. 560-5.

By this letter, the City does not concede these exhibits, which were not offered as evidence at trial, are admissible, and the City reserves all rights, including the right to remedies for violation of the protective order. *See* Dkt. 31, paragraph 18.

Very truly yours,

TAFT STETTINIUS & HOLLISTER, LLP


Cary E. Donham

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cc: Tim Swabb
Alan Slagel
Elizabeth Babbitt
John F. Kennedy